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as made. This difference between the scope of the promises and the scope of the resulting legal obligations becomes especially striking in the cases in equity which allow specific performance with abatement in price because of deficiencies; it is, however, by no means confined to equity. As a matter of mere logic, then, the law may if it wishes hold that one legal consequence of contractual promises is a duty not to announce to the other party, prior to the date set for performance, that one is not going to perform. The only real problem, therefore, is that of policy; does such a rule work well in practice? Professor Williston believes it does not, and his criticisms of the rule upon these grounds are of great weight.

One may, however, differ with Professor Williston upon these and other particular topics; he may wish that a more searching fundamental analysis had been used throughout the work—an analysis, that is, that kept always in mind the distinction between facts and their legal consequences, between the different meanings given to the word right, *etc.*,—without failing to recognize that the whole legal profession owe a great debt of gratitude to Professor Williston for the patience, the thoroughness, and, above all, the sanity with which he has collected, digested and discussed for us this immense mass of material. The book is as indispensable in the field of contracts as Wigmore is in that of evidence.

WALTER WHEELER COOK

COLUMBIA LAW SCHOOL

A MONOGRAPH ON PLEBISCITES, with a Collection of Official Documents. By SARAH WAMBAUGH. New York: OXFORD UNIVERSITY PRESS. 1920. pp. xxxvi, 1088.

As an abstract proposition it seems reasonable that all civilized people should have a voice in determining matters affecting their own destiny. It is on this principle that the resort to plebiscites is based.

The moment this postulate of self-determination is taken out of the realm of mental abstractions and concretely applied, it becomes apparent that it is subject to important limitations. In its broadest meaning a plebiscite is a direct appeal to popular preference, and can be justified only on the assumption that popular preference should govern in the particular matter to be acted upon.

It requires but little reflection to realize that in many cases the momentary popular will, wholly apart from the problem of ascertaining it, is likely to prove a very uncertain and inadequate foundation for a right decision; partly because in a definite sense such a preference may not really exist, and partly because even when it clearly exists it may be inspired more by transient causes than by a perception of real and permanent interests. To give it value such an expression of preference presupposes both a competent capacity of judgment and the possession of sufficient information regarding the consequences, positive and negative, of the proposal on which a decision is to be rendered. In the absence of one or both of these two requisites, direct action, as distinguished from representative action, becomes the most hazardous and the least trustworthy of all possible methods of settling important questions.

It is not, however, in this wide application of the word that plebiscites are considered in this important work, which confines attention to the doctrine of national self-determination; that is, to the question of determination by the inhabitants of a given circumscribed area of the national group to which they shall belong. Many interesting plebiscites of importance from an historical point of view, like those resorted to in order to determine the form of government or the personality of the sovereign, are thus excluded from the scope of this

volume. The reason for this exclusion is found in the purpose for which this study was undertaken, which was to furnish information regarding international practice in the employment of plebiscites and the present status of the subject in its relation to international law. Its aim is to present the historical facts concerning the doctrine of plebiscites as actually applied in the concrete cases of this character.

Although we have examples of protest against the cession of territory by one sovereign to another by the nobles in the case of provinces ceded by Louis IX of France to Henry III of England on the ground that their rights were violated, and a similar protest of the people of Guienne against their separation from the Kingdom of England by the donation of Richard II, these transfers of territory can hardly be cited as distinctly raising the question of the right to demand a plebiscite. The announcement of a definite doctrine on this subject must be credited to Erasmus, who in 1517 declared that, since all power and authority over people rests on their consent, there can be no good title by conquest. Ten years later Francis I of France appealed to this principle in order to invalidate the cession of the duchy of Burgundy which he had made to Charles V by the treaty of Madrid; and his successor Henry II, in annexing the bishoprics of Toul, Metz and Verdun, was defended by the Bishop of Verdun on the ground that the King of France had come as a "liberator", who wished to treat the citizens as "good Frenchmen", and far from using measures of rigor appealed to the free vote of the people.

The right of territorial conquest was long held to include the right to dispose of subjects residing upon the conquered territory; for this seemed to be a logical corollary of territorial sovereignty considered as the possession of a personal sovereign. The people, although Erasmus had pointed out that there is a difference between men and beasts, went with the land as essential to its value.

As a question of international law the right of a people to choose its sovereign was first discussed in connection with the alienation of a part of a sovereignty. In 1625, Grotius declared that this required the consent of the alienated part, and in this he was followed by Pufendorf and others. In practice this doctrine resulted before the French Revolution in a compromise by which individual inhabitants were accorded the right of migration or option. The absolute right of personal sovereigns to cede or to acquire territory was not brought into question.

A change of opinion in regard to the rights of the population was, however, a necessary corollary of the conception of sovereignty as inhering in the people; and yet so long as sovereignty was regarded as "supreme power" it could not quite logically be maintained that it did not completely pass to the possessor of the supreme power, whoever in fact that might be, and regardless of how that supremacy might be acquired.

Undoubtedly a new situation was created when it was announced in the American Declaration of Independence that all just government is derived from the consent of the governed. That declaration inaugurated a new relation between the citizen and the State in the United States of America, but it did not at once affect the external relations between sovereign States. The annexation of territory to the United States under whatever form has not been attended with plebiscites in the annexed territories. The reasons are, probably, first, that the territories annexed were very thinly populated and by peoples who had not acquired a strong national consciousness, so that the transfer of their allegiance did not involve reluctance on their part; and, secondly, that all populations brought under the control of the United States have been welcomed to a liberty and a protection of individual rights greater than they had ever before enjoyed.

In the early years of the French Revolution, the same reasons for not em-

playing plebiscites might no doubt have been invoked, for France invited the nations of Europe to a larger liberty. But the devotion of the French mind to the logical application of abstract principles was too strong to resort to such reasoning. As Miss Wambaugh states,

"It was evident that the old principles of territorial cession which confounded the State with the prince were wholly unsuited to the new doctrine of popular sovereignty which, when established within the State, implied a corollary that no change of sovereignty was legal without the consent of the people concerned."

It is impossible within the limits of this review to reproduce even superficially the admirable historical summary in which Miss Wambaugh has followed the vicissitudes of this new doctrine, from the renunciation of conquests by the Constituent Assembly of France in May, 1790; through the Napoleonic era, which consigned the principle to oblivion; the European weariness of the whole doctrine of popular sovereignty; the flaming up of the embers of nationalism; the revival of the plebiscitary method under Cavour, in his efforts to unite Italy and create good relations with France; the temporary yielding to the idea by Bismarck, followed by the rejection of it; and the disrepute into which it had fallen when Hall declared that it had "no standing in law", when Oppenheim expressed doubt if it would "ever be made a rule of international law", and when even Sir Robert Phillimore, who appears to have favored the idea of self-determination in some form, suggested that the vote of an assembly would be preferable to a popular vote.

In Germany the whole idea of the self-determination of peoples came to be ruthlessly scouted. When in 1910 Alsace-Lorraine was seeking some degree of autonomy, a distinguished German statesman said to the writer of this review: "How absurd! We have conquered them." The eminent professor of law in the University of Berlin, Dr. Joseph Kohler, wrote:

"The irresistible force of war and conquest takes possession of countries and peoples. That is one of the fundamental principles of international law, and it suffices to make litter of the old sentimentalities. . . . It is needless to be disquieted over the superfluous sentiment regarding a plebiscite, in virtue of which it is of importance to consult the population to know if it wishes to belong to one state or another. The territory carries with it the population that inhabits it; the individual who is not satisfied has only to quit the territory of the State. . . . The rational assent of a people has hardly any sense; the impulsive forces of the popular soul repose the greater part of the time below the threshold of reason and reflection. Thus it is all reduced to force, an inflexible domination."

The objections to the practical value of a plebiscite are summarized by Miss Wambaugh as follows, with the answers made by the advocates of this procedure:

"The first is the reluctance to allow the fate of the territory to be settled by a bare majority, swayed, in their apprehension, not by reason but by sentiment of a possibly evanescent sort. The answer is made that it is better to have the majority rule than the minority, and that the most important of all matters is precisely sentiment, which is the force most important to enlist for the purpose of stable order. The second objection is that the plebiscite presents opportunity for pressure and fraud, exemplified particularly in Savoy and Nice. The citation of the votes of Savoy and Nice against the doctrine is of no value according to Fusinato, who says that all the accusations brought, and fairly brought, against these plebiscites, especially on account of faulty execution, cannot detract from the theoretical importance of the affirmation of the principle itself. The third objection to the plebiscites of the past is that they have merely been an unnecessary ratification of a *fait accompli*. As to this argument Fusinato adds that it has even here a juridical value by showing that the right was bound up with the force used, because to force was added the will of the people. . . ."

The Great War has revived public interest in the doctrine of self-determination

and the different modes of expressing it, and hence in the plebiscite. In the recent treaties there are many provisions for it, and there will be fresh and valuable opportunity to see how it operates and what results it may bring forth.

The ultimate conclusion regarding the value of plebiscites depends, in the last analysis, on the reality of the right of national self-determination; which opens a host of difficult problems, chief among them, What is a nation? Much depends upon the answer. If nationality is founded on race, religion, language, or tradition, there will be great difficulty in a permanent organization of nations that will make them inclusive of their normal constituents. The geographic barriers alone are insurmountable. The economic requirements of neighboring peoples create serious perplexities which tariff restrictions in small areas greatly intensify. There is probably far more value to the preservation of human rights in constitutional guarantees of the rights of minorities,—that is, of all citizens equally,—and just international relations, if men have the wisdom to adopt them and submit to them, than there is in the decisions of majorities determined by plebiscite, especially if the right of migration is freely granted. Switzerland and the United States have a strong sense of nationality; but it rests on institutions, not on race, religion, language, or any other subjective ground of choice.

Nevertheless, plebiscites may yet have a certain degree of social utility; but whether they have or not, the history of thought on this subject and the experience obtained in applying it have their value as a part of the great experiment of government, and Miss Wambaugh's work, so intelligently and conscientiously executed, with its ample and scholarly documentation, its lucid interpretation of historic facts, and its apparatus for making all the contents of her book easily accessible, not only deserves high commendation but is likely to be for a long time to come the standard treatise on the subject.

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THE PRINCIPLES OF EQUITY. By A. M. WILSHERE. London: SWEET AND MAXWELL, LTD. 1920. pp. xxvii, 584.

This is an elementary text-book of the hornbook type, prepared for the use of English law students. Its general character is indicated by the fact that of the twenty-seven introductory pages, eight deal with the nature and history of equity jurisdiction and nineteen with the maxims of equity, and of the 584 pages, seventy-four are given over to an epitome of the text, to aid the faltering memory of the student. The book is all-embracing, containing chapters on penalties and forfeitures, separate property of married women, infants and incompetents, assignments of choses in action, subrogation, conversion and equitable execution, as well as on the more usual subjects of trusts, mortgages, specific performance, fraud and mistake.

The arrangement and classification is excellent, the treatment of modern English statutes affecting various rules and doctrines of equity is very useful. The authorities are well selected and include the important recent English decisions. The treatment of the subject is conventional and is often limited to the statement of legal rules without analysis or illustrative application to specific cases.

For American readers the book will be found to be chiefly useful as a source of authority and for its discussion of the English statutes. It will not be of much assistance to American students, as no American cases are cited or peculiarly American developments of equity treated. The discussion of the subject is too